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SUMMARY RECORD OF THE 27th MEETING

Chairman: Mr. ESCOVAR-SALOM (Venezuela)

later: Mr. MAZILU (Romania)
(Vice-Chairman)

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The meeting was called to order at 10.05 a.m.

AGENDA ITEM 147: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT (continued) (A/49/10, A/51/22, vols. I and II)

1. Mr. SYARGEEU (Belarus) said that his country's support for the establishment of an international criminal court was set forth in its written comments contained in documents A/CN.4/448, 452/Add.1 and 458. It commended the progress made at the two sessions of the Preparatory Committee on the Establishment of an International Criminal Court, although the choice of options open to that committee remained extremely wide. It was to be hoped that discussion of the texts for incorporation into a convention for an international criminal court could be taken up and completed in 1997-1998.

2. His delegation believed that the General Assembly would take a positive decision on convening a diplomatic conference to adopt the draft statute for an international criminal court in 1998, and welcomed the invitation by the Government of Italy to hold the conference in Rome. In that regard, the proposal by the Republic of Korea concerning the division of work between the Preparatory Committee and the diplomatic conference merited consideration. The decision to establish a preparatory committee for the conference could be taken at the current session of the General Assembly. Work on the text of the draft convention should be assigned to the open-ended working groups, with a staggered schedule of meetings, so as to enable small delegations to take part in the discussions.

3. Belarus supported the idea of close interconnection between the court and national judicial organs. The former should complement the latter when they were not effective. However, the principle of complementarity should not result in the imposition of unnecessary limits on the court's jurisdiction.

4. Regarding the establishment of the court, the idea that the agreement between the court and the United Nations should be subject to the approval of States parties to the statute was to be welcomed, as States would then be able to influence the language of the agreement. His delegation believed that the draft agreement should be reviewed at the conference of States parties, and that it would merit their approval.

5. Belarus favoured limiting the court's jurisdiction to a hard core of crimes and welcomed the singling out of genocide as a crime in respect of which acceptance of its jurisdiction was inherent in participation in the statute. However, as the regime stipulated by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide did not apply to States not parties thereto, the basis for the court's jurisdiction in respect of genocide should be the statute itself rather than that Convention. In order to establish the court's jurisdiction in relation to crimes under general international law, all such crimes, including genocide, should be defined in the statute itself. A clear definition of such crimes was a sine qua non in efforts to curb criminal activity.

6. The list of crimes referred to in article 20, paragraph (e), of the statute seemed incomplete, and could be extended by including the 1977 Protocol II Additional to the Geneva Conventions, as recent events had shown that most serious violations of international humanitarian law now occurred in armed conflicts of a non-international character. At the same time, the Geneva Conventions of 1949 could be removed from that list, for given universal participation of the States therein, they established crimes proceeding from the general principles of international law rather than from treaty provisions. On the question of which treaty-based crimes should fall within the court's jurisdiction, Belarus took a flexible position. There were no legal obstacles whatever to bringing any such crime within the court's jurisdiction, if that crime was extremely serious and was a cause of concern for the international community.

7. Belarus supported the provision of article 23 that enabled the Security Council to make use of the court on a permanent basis. However, paragraph 3 of that article established a strict interrelationship between the actions of political and judicial organs in all situations. The court should be bound by Security Council decisions only when an act of aggression had been committed, as provided in paragraph 2. It would thus be advisable to delete paragraph 3.

8. Belarus welcomed the detailed provisions dealing with investigation and prosecution. Under article 26, paragraph 5, however, the category of parties which could request the court to review a decision of the prosecutor not to initiate an investigation or not to file an indictment would be restricted to complainant States and the Security Council. That category should be broader. Any State party to the statute that accepted the jurisdiction of the court with respect to a crime constituting the substance of a case, as well as the Security Council in all circumstances, should be entitled to request the court to review such a decision.

9. The view that a considerable number of States parties would be required for the statute and the convention to enter into force deserved support. Between 80 and 90 ratifications would be required if the court was to function effectively.

10. Financial questions relating to the establishment of the court should be considered at the current stage of the discussion. An independent organ with close ties to the United Nations, the court should protect the interests, not only of States parties to its statute, but of the entire international community. An indispensable condition for its efficient functioning was the universal participation of States in its work; yet that would hardly be feasible if it was funded solely by States parties to the statute. It was imperative that funding should be provided from the United Nations regular budget.

11. Lastly, the covering treaty should stipulate a fairly rigid procedure for amendment of the statute, thereby guaranteeing the stability of its provisions. The view was expressed in paragraph 3 (d) of appendix I to the draft statute that the list of crimes falling within the jurisdiction of the court could be extended through a review of the statute to take account of newly adopted conventions. An alternative method would be simply to incorporate in the text any crimes defined in such conventions and to allow for the possibility of entering reservations to that provision. Such a provision would take effect

only if a sufficiently large number of parties to the convention had accepted the court's jurisdiction in respect of the crime in question. Accordingly, it should be understood that the list of crimes contained in the annex to article 20, paragraph (e), could be supplemented in the manner indicated.

12. Mr. RUBADIRI (Malawi) said that the time was ripe to adopt an instrument establishing an international criminal court. His delegation fully endorsed the conclusions of the Preparatory Committee contained in document A/51/22. Delegations must have full powers to negotiate with a view to producing a draft consolidated text, and inclusion in the relevant draft resolution of an express provision in that regard could assist in expediting the Preparatory Committee's work.

13. With regard to the topics to be discussed, early discussion of the definition and elements of the crimes to be covered by the statute, and of questions relating to complementarity and the trigger mechanism, would increase the chances of the Preparatory Committee making substantial progress in its work. The completion by the International Law Commission of its work on the draft Code of Crimes against the Peace and Security of Mankind should give fresh impetus to that problematic aspect of the statute. At any rate, it would be helpful to agree on the issues to be dealt with at a particular session of the Preparatory Committee. In the past, informal consultations conducted in advance had proved helpful. Such consultations could again be conducted, by the Chairman of the Preparatory Committee or by the Legal Counsel.

14. The General Assembly should give serious consideration to ways and means of en bling developing countries to send experts to attend sessions of the Preparatory Committee. Financial constraints had made it particularly difficult for some delegations to attend all sessions of the Committee. The principle of universality, crucial to the proper functioning of the court, could be achieved only with the participation of all the stakeholders at all levels of the process, including the important preparatory phase. In view of the difficulties to which other proposals more attractive to his delegation seemed to give rise, it lent its support to the proposal in that regard contained in the draft resolution prepared by the Chairman of the Preparatory Committee.

15. Lastly, it was important to decide on the possible dates for the convening of a diplomatic conference of plenipotentiaries. In his delegation's view, 1998 was a feasible date for the convening of such a conference.

16. Mr. MOLDE (Denmark) said that his country's basic positions regarding the establishment of an international criminal court had been presented in the statement made by Ireland on behalf of the European Union. His current statement would supplement those positions by setting forth Denmark's views on the question in more detail.

17. Denmark believed that the court should be established through a multilateral treaty. With a view to giving the court the necessary authority, the General Assembly should, by a resolution, adopt the treaty establishing the court, and open it for signature and ratification or accession. That resolution could also lay down the basic elements of the relationship between the court and the United Nations. The more detailed aspects of that relationship should be

regulated in a special agreement to be concluded between the two bodies. The court should be funded from the United Nations regular budget.

18. The court should be a permanent body, but should meet only when required. The president, prosecutor and registrar should, however, be employed on a full-time basis.

19. The jurisdiction of the court should, at least initially, be limited to the core crimes under general international law. Those crimes should include genocide, aggression, war crimes, crimes against humanity and attacks against United Nations and associated personnel. The crimes should be defined in the statute; in so doing, full account should be taken of the draft Code of Crimes against the Peace and Security of Mankind. Further crimes, including treaty-based crimes, could be added at a later stage by means of a review mechanism which should be included in the statute. The jurisdiction of the court with regard to the core crimes should be inherent, so that States accepted the jurisdiction of the court in that regard when acceding to the statute and no additional State consent was required in a particular case.

20. All States parties to the statute should have the competence to trigger the court's involvement in a particular case. In addition, the prosecutor should have the power to initiate investigations ex officio on the basis of information obtained from any source. The role of the Security Council in triggering court proceedings should be limited to the possibility of referring a matter to the Court. A provision could be added to the effect that the statute in no way affected the role of the Security Council in maintaining international peace and security as prescribed in the Charter.

21. The principle of complementarity should be further elaborated in the light of the categories of crimes to be included in the statute. In principle, the court should have jurisdiction only when national jurisdiction was not available or not effective. It should be borne in mind, however, that the likelihood of that condition being fulfilled in a particular case varied depending on the category of crime involved. It should in any case be for the Court to decide whether national jurisdiction was available and effective. Lastly, the statute should contain provisions on the general rules of criminal law to be applied by the court, provisions guaranteeing due process and the protection of witnesses and victims, and provisions concerning the obligations of States to cooperate with the court.

22. Concerning the procedural aspects of the question, it had become clear that the establishment of a permanent international criminal court posed difficult political and technical problems. As yet, the Preparatory Committee had been unable to work out a widely acceptable consolidated text of a convention, but the necessary elements for preparing such a text were available. At the current stage, therefore, no new texts were called for: what was needed was to consolidate the texts already on the table.

23. In its conclusions, the Preparatory Committee recommended that it should meet three or four times, up a total of nine weeks, in order to elaborate a consolidated text, and that it should complete its work in April 1998. However, it might not be necessary for the Preparatory Committee to meet for nine weeks

before the diplomatic conference. At its current session, the General Assembly should decide to convene the Preparatory Committee for six weeks in 1997, preferably in three two-week sessions. The General Assembly could then decide at its next session whether it was necessary for the Preparatory Committee to meet in 1998, and, if so, whether for one, two or three weeks.

24. Some of the most difficult issues could be solved only at the conference itself. Consequently, a conference of at least three to four weeks' duration would probably be needed. Having regard to the Preparatory Committee's assessment, the General Assembly should decide to convene a conference in 1998.

25. A decision on the precise date of the conference should not be postponed until the next session of the General Assembly, by which time it might be too late to convene a conference in 1998. Furthermore, in the meantime the international community might make plans for other events that would interfere with the holding of the conference. The Italian Government had offered to host the conference in June 1998, and would need time to prepare for it. That generous offer should be accepted at the current session. Setting a date for the conference at the current session would also put pressure on the Preparatory Committee to finish its work, and would signal to countries that had not yet participated in the preparatory process that they now had their last chance to become involved in and influence the process.

26. It was of paramount importance that the court should enjoy universal support. As many countries as possible should thus participate in the further work of the Preparatory Committee, and in the conference itself. Since some countries faced financial constraints in that regard, his delegation wholeheartedly supported the proposal contained in the draft resolution prepared by the Chairman of the Preparatory Committee that a special fund should be established to finance the participation of representatives from low-income developing countries. Subject to parliamentary approval, his Government stood ready to contribute to such a fund.

27. Mr. KUMAR (India) said that the resurgence of war crimes and crimes against humanity over the past few years had underscored the need to establish an objective and permanent international criminal court. His delegation wished to present a brief outline of its broad policy approach to the proposed court, which should be able to command universal respect and facilitate the widest possible participation of States. To that end, the court should be based on optional jurisdiction, its jurisdiction should cover only the most serious crimes of concern to the international community as a whole, it should ensure respect for and primacy of national criminal justice systems, it should be an independent international juridical institution, and accused persons should be accorded all relevant individual human rights and commonly recognized procedural guarantees.

28. Suggestions that the court had inherent jurisdiction, or that its jurisdiction had superiority over national jurisdictions or included crimes falling solely within the internal jurisdiction of States could impede achievement of the objective of universality and it was therefore necessary to emphasize complementarity between the court's jurisdiction and national jurisdiction. The court should be a truly independent institution, not subject

to political interference by States or by the United Nations and its principal organs, including the Security Council.

29. The question of the crimes to be included within the jurisdiction of the court required closer scrutiny and must be addressed comprehensively by the international community. It was particularly important that terrorism, especially transboundary terrorist acts, should be included because it represented a direct violation of human rights.

30. With regard to outstanding issues, his delegation was confident that they could be resolved by identifying common features of criminal procedures with due recognition of the special attributes of both the common law and civil law systems.

31. The mandate of the Preparatory Committee should be renewed to enable it to complete its task with regard to the remaining substantive issues. Those should be resolved by consensus, given the unique nature of the court. His delegation considered it feasible to hold a plenipotentiary conference in 1998 and would continue to participate actively in the deliberations.

32. Mr. MAZILU (Romania) said that his delegation endorsed the statement made by the delegation of Ireland on behalf of the European Union and associated States. The fact that 53 written proposals had been submitted to the Preparatory Committee showed the real interest of Member States in establishing an appropriate criminal judicial body with adequate operational rules. His delegation commended the International Law Commission for preparing a draft statute for the court, as mandated by the General Assembly, and the Preparatory Committee for the progress made in preparing the text of a convention for the court.

33. Much remained to be done to finalize a widely acceptable consolidated text and his delegation wished to comment on five issues. First, with regard to the status and nature of the court and the method of its establishment, the court should be an independent judicial institution, established by a multilateral treaty, as recommended by the International Law Commission, in order to provide it with the necessary independence and authority. The treaty should contain the court's statute and other instruments relating to its functioning. A relatively high number of ratifications should be required in order to promote the universality of the court and the representation of the principal legal systems of the world and all geographical regions.

34. Second, in order to ensure the universality and standing of the court, a specific relationship between the court and the United Nations would be essential. It should be defined in a special agreement, to be elaborated simultaneously with the statute, and approved by the States parties to the statute.

35. Third, his delegation considered that the court's jurisdiction should be limited to the most serious crimes of concern to the international community as a whole, in order to avoid interfering with the jurisdiction of national courts. The court should play an important role in deterring such crimes and ensuring that those responsible for them were brought to justice. The crimes within its

jurisdiction, such as war crimes, should be defined with the clarity, precision and specificity required for criminal law, in accordance with the principle nullum crimen sine lege. The definition of core crimes should duly reflect the evolution of State practice, taking into account the provisions of the draft Code of Crimes against the Peace and Security of Mankind. Genocide, crimes against humanity, serious violations of the laws and customs applicable in armed conflict, and international terrorism qualified for inclusion within the jurisdiction of the court. The inherent jurisdiction of the court should be expanded beyond the crime of genocide and the prosecutor should be allowed to initiate the necessary investigations and prosecutions. The rights of the accused should be fully guaranteed, with full respect for the principle nulla poena sine lege, and capital punishment should be excluded from the sentences the court could impose.

36. Fourth, the court's statute would not affect the role of the Security Council as defined in the Charter. The Council would continue to exercise primary authority to determine and respond to threats to and breaches of the peace and acts of aggression. However, the relationship between the court and the Council should not undermine the court's independence and integrity or the sovereign equality of States.

37. Fifth, the statute should provide a workable and predictable flexible framework for cooperation between the States and the court, which should be broadly similar to that existing between States in the case of extradition and legal assistance agreements. The principle of complementarity was particularly important in that connection. The court would be operating in a complex political environment, where different political views could influence the process of cooperation. The Preparatory Committee should therefore elaborate the main guidelines for such cooperation.

38. The future work of the Preparatory Committee should be carried out by open-ended working groups which would conduct negotiations concerning proposals, with a view to producing a draft consolidated text. Full transparency should be ensured and every effort should be made to reach general agreement on each issue in order to achieve the universality of the convention. The text of the latter should be submitted to a plenipotentiary conference in 1998. His delegation appreciated the Government of Italy's offer to host the conference.

39. Mr. SOULAMA (Burkina Faso) offering general comments on the establishment of an international criminal court, said that one essential concern was the court's jurisdiction, which his delegation, among others, wished to see linked to the Code of Crimes against the Peace and Security of Mankind. That linkage should from the outset have been a basis for the discussions on the establishment of the court, as an integrated approach should be taken. It was significant that the States which gave priority to the establishment of the court were those which were opposed to any linkage between the Code and the court and to the inclusion of the crime of aggression within the court's jurisdiction. Those States maintained that there was no universally accepted definition of aggression. However, in the light of the definition given in General Assembly resolution 3314 (XXIX) and of the judgment of the International Court of Justice of 27 June 1986, it could be argued that the crime of aggression fell within the jurisdiction of the Security Council. On the other

hand, the Charter empowered the Security Council to determine the existence of an "act of aggression", and not the "crime of aggression". That lack of clarity could lead to extrapolations aimed at conferring on the Council prerogatives to which it was not entitled under the Charter, thus jeopardizing the organic equilibrium of the latter.

40. It was necessary to continue examining the statute of the court and the way in which the court would be financed, in view of its nature and functions. With regard to the proposed convening of a diplomatic conference, his delegation had difficulty in understanding why there was a need to hurry the work; the importance of the issues yet to be decided required the discussion to be conducted at a pace that ensured maximum participation.

41. Ms. LEHTO (Finland) said that her delegation fully supported the statement made by the representative of Ireland on behalf of the European Union and other States. Finland's commitment to the early establishment of an effective and independent international criminal court had indeed been confirmed in the statement by its Minister for Foreign Affairs in the General Assembly.

42. A balanced approach must be taken to the questions of jurisdiction and complementarity: the court's subject-matter competence should allow it to act, whenever a very serious international crime was committed, on the basis of its assessment of the availability of effective national criminal proceedings; and the court's independence must be preserved, although a link between the court and the Security Council could be envisaged. The court's statute should contain provisions on due process, the obligation of States to cooperate, and penalties, but there should be no provision for capital punishment.

43. The sessions of the Preparatory Committee had been extremely productive, producing proposals on all parts of the draft statute and on some issues, such as the general principles of criminal law, which had not been addressed by the International Law Commission. The Preparatory Committee was well equipped to complete its task, and three or four further sessions should be sufficient. It did not have to do all the work of a diplomatic conference and it should not overload the draft statute with detailed rules. It was now the responsibility of the Sixth Committee to ensure that the process was brought to a successful end. The General Assembly should therefore reaffirm the Preparatory Committee's mandate and set a timetable for its work to be completed by April 1998. It should then, at its fifty-first session, decide on the convening of a conference of plenipotentiaries, the most appropriate date for which would be June 1998.

44. Mr. Mazilu (Romania), Vice-Chairman, took the Chair.

45. Mr. VASSYLENKO (Ukraine) said that it had become increasingly clear that, in addition to ad hoc tribunals, a permanent criminal justice institution was a practical necessity, for the inevitability of punishment would help to prevent crimes and promote international peace and security. The proceedings of the Preparatory Committee had demonstrated the aspiration of States to establish an effective international criminal court.

46. The Preparatory Committee's recommendations concerning its future meetings should make it possible to convene a diplomatic conference in 1998. Those

meetings required the active participation of all States, and the negotiating mandate should be specified clearly by the Sixth Committee. His delegation supported the recommendation that the work should be done in open-ended working groups, provided that the latter did not meet simultaneously, and stressed that the proposals compiled by the Preparatory Committee did not prejudge the position of any particular country.

47. His delegation agreed that the court should be a permanent independent institution and should meet only when a complaint was submitted. The most appropriate way of establishing the court would be by a multilateral treaty. The principle of complementarity was essential, for it was consistent with the interest of States in remaining responsible for prosecuting violations of their laws, while still providing for recourse to the court when national procedures proved ineffective. The relationship between the international and national criminal jurisdictions must be made clear in order not to impair the court's effectiveness.

48. The offences referred to in the Convention on the Safety of United Nations and Associated Personnel should be included in the list of crimes covered by the statute, for such personnel was often involved in situations where national legal systems could not adequately address such offences. However, the inclusion of an exhaustive list of crimes might restrict the court's jurisdiction, and the statute should therefore provide a flexible procedure for its own revision and the extension of the court's jurisdiction. It was also important to harmonize the draft articles under consideration with the draft articles on State responsibility and on the draft Code of Crimes against the Peace and Security of Mankind, which were also nearing completion.

49. Ukraine had always supported the creation of an international criminal court and was ready to participate actively in the future work, in the hope that the international community would demonstrate enough political will to meet what was an historic challenge.

50. Mr. FOWLER (Canada) said that the Second World War had underscored the need for an international criminal tribunal. His Government therefore believed that a diplomatic conference to adopt the statute of a permanent international criminal court should be convened as soon as possible. Although his delegation believed that the target date of 1998 for holding such a conference represented an undue delay, it nevertheless recognized that some delegations needed more time to resolve the many difficult issues before the Preparatory Committee.

51. The establishment of the Tribunals for the former Yugoslavia and Rwanda had proved that the international community could accept the notion of a functioning international criminal court. Governments should take the next step. Even though the international community had acted comparatively swiftly in establishing those tribunals, it had not acted fast enough for thousands of victims who had suffered and died in appalling conditions. The world should not wait for another catastrophe before establishing a body capable of dealing with issues of criminal responsibility arising out of armed conflict. It was obviously preferable to have in place a standing international tribunal in order to avoid the delays attendant on establishing a new body from scratch. In addition to that advantage, a permanent court would reduce the potential problem

of selecting which cases would go to court and, furthermore, it should ensure greater consistency in the jurisprudence to be developed. Although some delegations had expressed concern in the Preparatory Committee that the process was perhaps moving too fast, he reminded the Committee that the project had been gestating for over 50 years. His Government did not believe that undue haste was the problem.

52. The court would be of tremendous deterrent value as long as it was allowed to function effectively. Its importance in a practical sense, however, would be its potential to operate in situations marked by the complete breakdown of civil society and law and order. In those situations criminals had been able to exercise and abuse military and political power in the absence of any national or international law enforcement and judicial authority to call them to account. There had to be a means of sending the message that such crimes would not be ignored and their perpetrators would be held accountable and brought to justice.

53. His delegation would like to see broader and preferably universal participation in the work of the Preparatory Committee. His Government had been disappointed that not enough developing countries were represented in the Committee. It was also aware of the criticism that the United Nations had moved quickly to establish the Tribunal for the former Yugoslavia only because it dealt with events that had occurred in Europe. The example of Rwanda had proved that internal conflict resulting in the commission of war crimes and crimes against humanity could happen anywhere and, indeed, many situations of unrest and conflict were to be found in the developing world. The establishment of a permanent tribunal would address the needs of the victims and would ultimately contribute to stability and reconciliation. It was therefore in the interest of all nations, particularly those most likely to be subjected to unrest and conflict, to support the court. Moreover, knowledge of the existence of such a body might serve to moderate the excesses of criminal violence unleashed in war and other situations of armed conflict.

54. The court should have jurisdiction over events arising out of conflicts of both an international and an internal nature. The distinction between the two had in any case become somewhat artificial. The Security Council itself had helped to blur the distinction, a development welcomed by his Government. It was important to recall that the development of international law supported the proposition that the commission of crimes against humanity did not require any nexus to conventional armed conflict, either international or internal.

55. His Government also believed that the future court's relationship with the United Nations was of the utmost importance. His Government took the view that there should be a link with the Security Council, but it was important to ensure that the court was at the same time independent and effective. The Council should be permitted to refer situations to the court so as to avoid the creation of future ad hoc tribunals, but it should not be allowed to determine which cases came before the court. It had been suggested that the judges of the court should be elected by the General Assembly. That was an interesting idea and one which would bring the court into even closer association with the United Nations. His Government believed that, ideally, the court should be a judicial organ of the United Nations similar to the International Court of Justice, but recognized that, since such a status would require an amendment to the Charter,

the proposition would lose some of its appeal. Nevertheless, the idea of having judges elected by the General Assembly would represent a stronger commitment to the court on the part of all States Members of the United Nations, whether they were parties to its statute or not. Because of the proposed institutional links with the United Nations, his Government believed that the court should be funded out of the United Nations regular budget. If the Security Council were to be allowed to refer cases to the court, it seemed fair that the United Nations should bear the appropriate financial responsibility.

56. It was important to ensure that the court did not become a marginalized institution. In that regard, his delegation accepted the proposition that it should complement national judicial systems. But when the latter could or would not function effectively, the court's inherent jurisdiction should prevail. Nor should it require the permission of any State to act. One way to ensure that the court was not marginalized would be to give the prosecutor the authority to initiate investigations, albeit subject to some kind of review procedure. In general terms, the exercise of the competence of the court should not be regarded as an encroachment on sovereignty but rather as a kind of exceptional jurisdiction that must be continually justified by reference to the special circumstances surrounding the commission of the offences in question. For those reasons, his Government opposed attempts to erect unnecessary procedural barriers to the court's jurisdiction. The proliferation of such proposals at the latest session of the Preparatory Committee was a cause for concern.

57. Lastly, his delegation did not wish to see the Preparatory Committee get bogged down in an interminable debate over procedural and technical details. The finer legal and procedural points should be left for the court itself to work out. The most important consideration was to develop a system that ensured that the most qualified and capable candidates were appointed to the bench. They should be the ones to refine procedural points. Similarly, delegations should be discouraged from pressing for the incorporation of features of their own national judicial systems into the statute and procedures of the court. It was important to seek common ground and develop provisions of a general nature which would reflect the main elements of all systems. Delegations should look on the court as their own, not as a foreign judicial body to be guarded against. His Government was concerned that a tendency towards an exaggerated procedural and definitional exactitude could unduly delay the success of the project.

58. Mr. MAHUGU (Kenya) said that his Government had supported the decision by the General Assembly to establish the Preparatory Committee as part of the Organization's effort to respond more effectively to changing world circumstances. Whenever established machinery was found to be ill-equipped to deal with new problems, it was necessary to devise arrangements more suited to changing conditions. However, in seeking to modernize traditional norms, Member States should ensure that hard-won international legal and political gains were not sacrificed. The ultimate goal of the new international effort should be to establish a court that was effective, enjoyed universal acceptance and met the highest standards of justice and fairness. His delegation again urged Member States to take a more pragmatic approach towards reaching a final consensus on the matter. Despite some progress, the consensus among delegations was that a substantial amount of further preparatory work remained to be done. The issue of whether it was realistic at the current stage to set a date for the holding

of a diplomatic conference of plenipotentiaries in 1998 was in itself unimportant. Once a widely acceptable consolidated text had emerged from further preparatory work, setting a date could be taken up as necessary at the appropriate stage.

59. The conclusions of the Preparatory Committee reflected the need for more universal participation in its future work. It could not be denied that the continuing absence of a large number of delegations, particularly from developing countries, significantly hampered the discussions on the issue. It was therefore important for the General Assembly to find a way to encourage such countries to participate actively in future debates. The proposal for the establishment of a voluntary fund to provide assistance to legal experts from the least developed countries which would enable them to attend future sessions of the Preparatory Committee was commendable and should be supported.

60. Mr. EPOTE (Cameroon) said his delegation considered that the draft statute for an international criminal court would be viable only if it was the subject of the widest possible consensus. However, divergent opinions remained concerning a number of substantive issues. In that connection his delegation supported the idea of establishing the court by means of a multilateral treaty and believed, in regard to the relationship between the court and the United Nations, that precedence should be given to the principle of concluding an agreement binding on two independent entities. Concerning the jurisdiction of the court, the aim was to establish a judicial institution which provided the judge with the means to try the case and the accused with a suitable framework in which to defend himself. Further consideration should be given to the definition of crimes, in order to ensure that the provisions ultimately drafted were authoritative.

61. The future of the court would be determined by the other key divisive issues, namely acceptance of the court's jurisdiction, the consent of States and the conditions for the exercise of jurisdiction. If the inherent jurisdiction of the court was limited to the crime of genocide in accordance with articles 21 and 22 of the draft statute, and State consent was needed in each case in respect of other crimes, the court might well become paralysed. Furthermore, the respective responsibilities of the court and the Security Council should be clarified, for each had an important role to play in characterizing the crime of aggression. Articles 21, 22, 23 and 25 of the draft statute should therefore be brought into balance with a view to safeguarding the independence of the court and the equality of States. The concept of complementarity was of considerable significance in that connection. Unfortunately, however, many delegations seemed to place excessive emphasis on their national courts. As noted in the Preparatory Committee's report, there were differing views on how, where, to what extent and with what emphasis complementarity should be reflected in the statute (A/51/22, vol. I, para. 153). It was thus essential to clarify the concept and to make it the subject of specific provisions in the draft statute.

62. After drawing attention to the disturbing international context, in which an increasing number of serious crimes were being committed, he said that success or failure in curbing such crimes would depend on the solidarity of States and their attitude vis-à-vis the creation of international institutions capable of addressing shared concerns. The international community should

support the establishment of the court with a view to confronting the major challenge of international crime, which posed a threat to democracy. Resolution of the substantive issues and related problems, however, was a prerequisite to convening an international conference on the subject.

63. Mr. JAILANI (Indonesia) said that the resurgence of crimes against humanity had once again highlighted the need to establish an effective judicial mechanism to bring perpetrators of such heinous acts to justice. The deliberations in the Preparatory Committee had made some progress but much remained to be done. In order to ensure that any potential judicial mechanism was effective, the proposition would have to be acceptable to as many Member States as possible. Many critical issues needed to be explored in greater depth in order to achieve consensus.

64. The principle of complementarity was an essential component in the establishment of an international criminal court, particularly if the court was to be widely accepted. Complementarity should supplement and not supplant national jurisdiction. The international criminal court should exercise jurisdiction in cases involving serious crimes in which national authorities were unable to prosecute the alleged perpetrators owing to extraordinary circumstances. That position should be reflected clearly in the body of the statute to avoid conflicting interpretations. It would also be cost-effective for the proposed court to avoid unnecessary prosecution in cases which could be dealt with effectively by national courts. The exercise of criminal jurisdiction was the prerogative of States and the jurisdiction of the court was an exception to the rule. Moreover, States and the court should work within the framework of existing arrangements, particularly those governing judicial cooperation.

65. Cooperation between the court and States was vital if the court was to be effective. The principle of complementarity was essential when considering the relationship between the court and national authorities and should be examined in the overall context of issues contained in the statute, such as State consent, jurisdiction of the court and the trigger mechanism. The well-accepted principles of international criminal justice systems, civil as well as common law, called for a flexible mechanism that took account of various national requirements. Therefore, the obligations of States to assist in a prosecution should also be considered in accordance with the principle of complementarity. The decision of States would ultimately prevail with regard to apprehending the accused and surrendering him to the court or granting requests from other States.

66. There was no obligation on the part of a State or an international court to recognize a criminal judgement of a foreign State or national court and vice versa in the absence of an agreement between the parties on judicial cooperation in criminal matters. In that regard, it should be noted that the national laws of many States stipulated that once an individual had been prosecuted, that person was exempted from punishment in other judicial forums. Furthermore, in its current form, the relevant article contradicted the principle of complementarity. As to the role of the procurator, his delegation shared the concerns of other delegations concerning on-site investigations, which it believes would contravene a State's sovereignty. The required

assistance to the prosecutor in that respect went beyond the purview of international law.

67. Regarding the general principles of criminal law, his Government agreed with the widely held view that the fundamental rules of criminal law applicable to criminal acts prosecuted under the draft statute should be stated clearly in the statute itself in accordance with the principle of nullum crimen sine lege, nulla poena sine lege. In addition, the court should consider general principles of criminal law common to both civil and common law systems.

68. The list of crimes over which the court would exercise jurisdiction should be defined with clarity, specificity and precision. The definition of the crimes themselves should be dealt with by the respective multilateral treaties concerning those crimes. Accordingly, the statute should list the treaties embodying the crimes over which the proposed court would exercise jurisdiction. In that regard, his delegation believed that it would be useful to coordinate the work on the draft Code of Crimes against the Peace and Security of Mankind, particularly the list of international crimes, and the work of the international criminal court to ensure harmony between the Code and the draft statute and thus avoid unnecessary duplication.

69. On the issue of jurisdiction, his delegation believed that it should be based on State consent. Therefore the regime of "opting in" made by way of declaration deserved further consideration. His Government also concurred with the views expressed in the report that such an approach was consistent with the principle of sovereignty and the regimes set out by the treaties on the relevant crimes. The inherent jurisdiction of the court with regard to the crime of genocide was not an acceptable exception. As far as the definition of aggression was concerned, if it was to be incorporated into the draft statute it would have to be defined in legal terms. The definition of aggression contained in General Assembly resolution 3314 (XXIX) of 14 December 1974 was so complex that it could not satisfactorily be defined in a form acceptable to the international community.

70. Regarding the role of the Security Council, his delegation saw merit in the Council determining an act of aggression before it was brought before the court, particularly since under Chapter VII of the Charter the Council was responsible for maintaining international peace and security. However, it was generally acknowledged that in many instances deliberations in the Council had been politically motivated. As an independent judicial institution, therefore, the international criminal court should not be affected by such considerations.

71. Furthermore, the complaints mechanism set out in the draft statute needed to be clarified. His delegation believed that only States parties to the statute which had a direct interest in the case should be able to file a complaint, including the custodial State, the State where the crime had been committed, the State of nationality of the accused and the State whose nationals were the victims of the crime. Such an approach was necessary to avoid frivolous, politically motivated and unsubstantiated claims. In addition, when a complaint was lodged, the jurisdiction of the court should be invoked only after thorough investigation.

72. The administering of justice in a fair and impartial manner was a matter of prime importance. In accordance with the well-established principle of nullum crimen sine lege, the rules of procedure should ensure that the defendant was accorded a fair and impartial trial. It was important to emphasize that the proposed court should under no pretext be used for political or other purposes. In addition, there must exist agreement and understanding among the concerned parties before the prosecution of an individual before the court.

73. Mr. CRISOSTOMO (Chile) said that the Preparatory Committee's report marked progress towards the establishment of an international criminal court, to which Chile attached great importance: it had consistently supported such a move and contributed to the preparatory work. The community of States felt the need for such a court because it was not fully satisfied with the establishment of ad hoc jurisdictional bodies, which was a valid response to crises but not a permanent solution.

74. The useful work done by the Preparatory Committee had demonstrated the magnitude of the task and had revealed areas in which agreement could be reached fairly easily and others in which consensus would be difficult. All the materials produced would help to clarify positions and facilitate further progress. The establishment of an international criminal court was no longer a Utopian aspiration but an achievable ideal which could inspire the juridical and political actions of States and eliminate impunity with respect to serious international crimes.

75. However, a time limit must now be imposed on the Preparatory Committee in order to prevent an interminable accumulation of proposals and documents which would make its task harder rather than easier. It should now move on to the preparation of a diplomatic conference to adopt the statute of the court. There was no need for a new General Assembly mandate, but the Preparatory Committee should concentrate on the draft articles with a view to producing a widely accepted text. It should hold two or three two-week sessions before early 1998; it had itself suggested that fixing a date for the conference would help to speed up the work. His delegation believed that the conference should be scheduled for 1998 and that the preparations must be thorough, for the broad acceptance of the texts submitted to the conference would determine its success or failure.

76. Mr. MAGNUSON (Sweden) said that his delegation fully subscribed to the views expressed by the representative of Ireland on behalf of the European Union. His Government was deeply committed to the early establishment of a permanent and well-functioning international court which enjoyed universal acceptance and possessed sufficient authority to remedy impunity, which was unacceptable. It favoured inherent jurisdiction for the court, on the understanding that its competence would be limited to the so-called core crimes, and supported the proposal that the Security Council should be able to refer situations to the court for action with a view to obviating the need for new ad hoc tribunals. It believed, however, that the independence of the court would be seriously imperilled if the Security Council were allowed to refer particular cases to the court and also that the commencement of prosecution without permission from the Council should be permitted in cases arising from situations being addressed by the Council under Chapter VII of the Charter of

the United Nations. Such permission should be required only when the Council was actively dealing with a situation. His delegation was equally dissatisfied with the proposed complaints procedure, which was complicated and cumbersome and risked blocking action. It would instead prefer a system which empowered the prosecutor to commence prosecution ex officio.

77. The relevant articles of the draft Code of Crimes against the Peace and Security of Mankind merited attention, as they could serve as a basis for future negotiations concerning the crimes which would fall within the court's jurisdiction, which should be strictly defined and narrow. Those articles could also serve as a basis for the definition of the crimes, with the exception of aggression, which was not defined in the Code but should be included within the court's jurisdiction. In that connection, the difficulty of suitably defining individual criminal responsibility could be simplified if only the crime of war of aggression were to be considered. If necessary, the question of aggression could await the review of the list of crimes proposed by Denmark, a proposal which his delegation joined many others in supporting. The establishment of a short list of crimes which the overwhelming majority of States recognized as crimes under international law would preclude the need for the proposed opt-in system.

78. The principle of complementarity was another crucial issue that should be spelled out clearly in the draft statute. Carefully formulated admissibility rules should strike the appropriate balance between national jurisdictions and the jurisdiction of the international criminal court, which should be concurrent. The latter should assume primacy only when national legal systems failed.

79. Careful attention should also be given to ensuring the highest standards of due process, including the rights of the accused. The draft statute should define the general principles of criminal law, as well as the main rules governing investigation, indictment, trial and appeal. Rules of procedure and evidence should also be developed with a view to ensuring the fullest protection of the rights of the accused and of witnesses, as well as procedures that were both speedy and economic. Innovative solutions should be drawn from the best of many sources in regard to those issues, and also in regard to the articles on international cooperation, where a system sui generis should be created with a view to maximizing the obligation of States to cooperate with the court and minimizing opportunities to refuse such cooperation. Having reemphasized that inclusion of the death penalty was unacceptable to his Government, he added that attention should be given to indemnifying victims of crime and that, for economic reasons, his Government was prepared to accept a gradual approach to the organization of the court, with an inbuilt flexibility to meet heavier demands.

80. His delegation had been struck by the encouraging narrowing of differences reflected in the conclusions of the Preparatory Committee. It strongly supported those conclusions as representing the most widely acceptable compromise and urged their acceptance by the Sixth Committee, which should also decide that the diplomatic conference should be convened, preferably in June 1998. Lastly, he commended the valuable input of non-governmental organizations and concluded by expressing his delegation's readiness for close

and constructive cooperation with other delegations concerning the historic project under consideration.

81. Mr. THAHIM (Pakistan) said that he fully subscribed to the objective of resolving outstanding issues, preparing the draft statute and moving on to the convening of the diplomatic conference. The success of the court would depend on the cooperation of Member States, for which it would create new obligations; therefore, the Preparatory Committee should take into account the various concerns of Member States with divergent legal systems. The judicial framework to be created must be acceptable to Member States, which would seek clear guarantees concerning complementarity and the upholding of national jurisdictions. Similarly, the crimes to be adjudicated by the court should conform to a list which had achieved consensus in the Preparatory Committee and should not include aggression and terrorism, for which no clear definitions were available.

82. The problematic issues of complementarity, exercise of jurisdiction and the relationship between the court and the United Nations should be resolved before the diplomatic conference was convened. If the court was to be fully functional, a balance must be struck between its jurisdiction and that of national courts, while taking into account the concept of sovereignty, a fundamental issue which should be incorporated into the draft statute under a separate provision, which would state that the jurisdiction of the court would operate only if national trial procedures were ineffective or unavailable. His Government supported the principle of the primacy of national jurisdiction in order to preserve national sovereignty and avoid conflicts between the jurisdiction of States and the jurisdiction of the international criminal court. It supported the idea that the court's jurisdiction should be consensual and limited exclusively to the so-called core crimes. Moreover, the court's jurisdiction should not include aggression, the definition of which was controversial. The definition adopted by the General Assembly in 1974 was non-binding and political rather than legal in nature. Furthermore, aggression was a crime which was traditionally considered to have been committed by States whereas Pakistan considered that the court's jurisdiction should be limited to individuals. Similarly crimes such as terrorism should be excluded from the court's jurisdiction because of the difficulties involved in their definition. The applicable law and jurisdiction of the court should include the instruments and provisions cited in appendix II of the annex to the International Law Commission draft (A/49/10), plus Protocol II additional to the 1949 Geneva Conventions. The court should conduct trials for the commission of treaty crimes only when the States concerned were parties to the relevant convention and only when those States were not able to prosecute such offences themselves.

The meeting rose at 12.35 p.m.